

R. Paul Frasier

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| 1 IN THE CIRCUIT COURT OF THE STATE OF OREGON IN AND FOR THE COUNTY OF MALHEUR NICHOLAS MCGUFFIN,) Petitioner,) vs.) Case No. MARK NOOTH, Superintendent,) 15CV1030 SRCI,) Respondent.) DEPOSITION OF R. PAUL FRASIER May 31, 2019 Friday 8:19 a.m. THE DEPOSITION OF R. PAUL FRASIER was taken at the Coos County Courthouse, 250 North Baxter, in the City of Coquille, County of Coos, State of Oregon, before Denise C. Zito Smith, CSR, Certified Shorthand Reporter in and for the State of Oregon. | 3 1 2 I N D E X 3 WITNESS 4 R. PAUL FRASIER 5 BY MS. PURACAL 5 6 BY MR. REIM 159 7 8 9 EXHIBITS: 10 For Identification Marked 11 1 Subpoena 7 12 2 Letter Written By Paul Frasier 21 13 3 England Lab Report 89 14 4 Report By Kathy Wilcox 101 15 5 E-mail Chain 107 16 6 Microtrace File Document 107 17 7 Tip Sheet 109 18 8 Document Bates Numbered 003247 112 19 9 Subpoena to Nicole Price Nelson and a Letter from Paul Frasier 117 20 10 E-mail Chain 121 21 11 E-mail Chain 121 22 12 Affidavit to Correct a Death Certificate 126 23 13 Witness' Statements 130 24 25 (continuing) |
| 2 1 2 A P P E A R A N C E S 3 For the Petitioner: FORENSIC JUSTICE PROJECT 4 333 SW Taylor Street Suite 403 Portland, OR 97204 5 503/664-3641 6 jpuracal@forensicjusticeproject.org 7 BY: JANIS PURACAL 8 9 For the Respondent: DEPARTMENT OF JUSTICE TRIAL 10 DIVISION 11 1162 Court Street NE Salem, OR 97301-4095 12 503/947-4700 paul.reim@doj.state.or.us BY: PAUL REIM 13 14 15 Also Present: John Comery, Oregon Innocence 16 Project Research Paralegal 17 18 19 20 Reported By: Denise C. Zito Smith, CSR 21 22 23 24 25 | 4 1 (continuing) 2 14 Document Titled Conversation Log 135 3 15 CCH for Lonnie Baker 140 4 16 Coquille Police Department Report 142 5 17 Handwritten Poem 143 6 18 Tip Sheet 148 7 19 Tip Sheet 149 8 9 10 11 REQUEST: 12 Page 147, Line 6 13 14 15 16 INSTRUCTIONS: (None.) 17 18 19 20 21 22 23 24 25 |

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| <p>1 R. PAUL FRASIER, 2 having been first duly sworn to testify the truth, 3 the whole truth, and nothing but the truth, was 4 examined and testified as follows:</p> <p>5</p> <p>6 MS. PURACAL: We'll do appearances 7 for the record. Janis Puracal for Petitioner 8 Nicholas McGuffin?</p> <p>9 MR. REIM: Paul Reim, assistant 10 attorney general, representing the superintendent.</p> <p>11 THE WITNESS: Paul Frasier, the 12 victim, I guess.</p> <p>13 MS. PURACAL: Hopefully it won't be 14 that way.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MS. PURACAL: And then with me today 17 is John Comery, research paralegal at the Oregon 18 Innocence Project.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MS. PURACAL:</p> <p>22 Q. Good morning, Mr. Frasier.</p> <p>23 A. Good morning.</p> <p>24 Q. You've already given your name for the 25 record. You are the current district attorney for</p> | <p>5</p> <p>1 (Deposition Exhibit No. 1 2 marked for identification.)</p> <p>3 BY MS. PURACAL:</p> <p>4 Q. Is this a copy of the subpoena you 5 received from my office?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. You appeared today pursuant to that 8 subpoena; correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Have you ever testified at a 11 deposition before?</p> <p>12 A. I think I did one time. It was over 13 the telephone several years ago. So I don't 14 remember all the particulars of it, but I believe 15 I have once.</p> <p>16 Q. Was that in the context of your work 17 as a district attorney or was that in a separate 18 context?</p> <p>19 A. Kind of mixed. It involved -- I also 20 teach criminal justice classes at the community 21 college. And the administrator of the criminal 22 justice program was fired by the college, and I 23 was a witness into those proceedings when she 24 filed a wrongful termination lawsuit.</p> <p>25 Q. And you said that was several years</p> |
| <p>6</p> <p>1 Coos County?</p> <p>2 A. That's correct.</p> <p>3 Q. How long have you been the district 4 attorney?</p> <p>5 A. Was appointed in -- took office 6 January 1, 2008. So I've been the DA since that 7 time.</p> <p>8 Q. And before 2008, you were?</p> <p>9 A. I was a deputy district attorney -- 10 well, I came to Coos County in 1990 as the chief 11 deputy district attorney. I was moved to the 12 narcotics team as their narcotics prosecutor and 13 forfeiture counsel. I did that for about seven 14 years and then came back to the office as the 15 chief deputy. And then I got appointed to be the 16 DA.</p> <p>17 So I've been here in Coos County 29 18 years almost. I started my career in Josephine 19 County in 1984 as a deputy district attorney in 20 Josephine County.</p> <p>21 Q. You received from my office a subpoena 22 for your deposition.</p> <p>23 MS. PURACAL: And I'm going to ask 24 for the court reporter to mark that subpoena as 25 Exhibit 1.</p> | <p>8</p> <p>1 ago. Do you remember what year?</p> <p>2 A. 2017, maybe, 2016.</p> <p>3 Q. Did that case go to trial?</p> <p>4 A. No. Well, I don't know. I don't know 5 how it concluded. I was not called as a witness. 6 I don't know the status. Nobody ever got back to 7 me about what happened with the case. As far as I 8 know -- for all I know it's still pending.</p> <p>9 Q. Have you ever testified at trial?</p> <p>10 A. In a trial, no. I've been called as a 11 witness in -- I can think of two times where that 12 occurred where I was called as a witness. Once 13 was in -- this would have been back in the late 14 '80s. We had an aggravated murder case that 15 involved murders in Yamhill County and in 16 Josephine County. I was called as a witness in 17 Yamhill County by the defense about what our plans 18 were in terms of -- there were two 19 co-defendants -- whether we were going to try them 20 together separately. And there was issues about 21 who was going to seek the death penalty, if both 22 counties were, that type of thing.</p> <p>23 And for some reason, the defense felt 24 they needed to call me as a witness to establish 25 what Josephine County was going to do for the</p> |

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| <p style="text-align: right;">21</p> <p>1 test to do to begin with because I thought of 2 degradation and contamination and so forth, so I 3 just didn't think we'd find anything. And it 4 turns out I was right, but that's a story for 5 another day, I guess.</p> <p>6 MS. PURACAL: I'm going to hand you 7 a copy of a letter. And I'm going to ask our 8 court reporter to mark the letter as Exhibit 2.</p> <p>9 (Deposition Exhibit No. 2 10 marked for identification.)</p> <p>11 BY MS. PURACAL:</p> <p>12 Q. Do you recognize that letter?</p> <p>13 A. Yes. It's a letter I wrote.</p> <p>14 Q. This is a letter that you wrote to 15 Mr. Reim at the attorney general's office related 16 to the post conviction proceedings; correct?</p> <p>17 A. That's correct. My practice is any 18 time there's a PCR petition filed on any of our 19 cases here in Coos County that we respond to the 20 petition and we respond to the person handling the 21 petition with any comments we may have. So that's 22 my practice. In every case I do that.</p> <p>23 Q. And I think I have maybe 15 24 installments of letters. Does that sound about 25 right to you?</p> | <p style="text-align: right;">23</p> <p>1 that would run away from home; out of character. 2 And the first mistake I thought was 3 made was not treating her disappearance seriously 4 when it was first reported. Chief Reeves 5 basically blew her off. Then -- and I can't 6 remember whether it was Thursday or Friday -- the 7 chief had found out that Leah and Nick and 8 Brent Bartley and his then girlfriend and maybe a 9 couple other people had gone up to Brent Bartley's 10 grandparents' place before she disappeared on that 11 Wednesday for some sort of a party -- a barbecue 12 and stuff.</p> <p>13 My recollection is that the chief and 14 Dave Hall went up to the grandparents' place -- 15 they were out of town. They had gone on a 16 vacation where they were out of state, if not out 17 of country. And they went up there.</p> <p>18 And one of the things that people had 19 said that Leah was wearing this white T-shirt. 20 The chief kept referring to it as a wife-beater 21 T-shirt which I thought was inappropriate, but 22 okay. But they described hanging on a railing 23 around the deck a similar-type shirt, but they 24 left it. It turns out in the end it didn't mean 25 anything, but, you know, there's a similar-type</p> |
| <p style="text-align: right;">22</p> <p>1 A. That sounds about right.</p> <p>2 Q. If you look on page 2 of that letter 3 and you go down to the fifth paragraph it starts 4 with, "Later that morning."</p> <p>5 A. Yes.</p> <p>6 Q. The first two sentences are, "Later 7 that morning Leah's mother reported 8 to the police that Leah was missing. 9 This began a series of mistakes by the 10 Coquille Police Department."</p> <p>11 A. That's correct.</p> <p>12 Q. Can you talk to me about what those 13 mistakes were the police made?</p> <p>14 A. Well, there were several mistakes. 15 First off, I felt that the chief was not giving 16 appropriate attention to Cory Courtright's 17 concerns.</p> <p>18 I personally did not know 19 Leah Freeman. I live here in Coquille. My kids 20 went to high school here in Coquille. If you look 21 at the yearbook that freshman year for Leah, my 22 daughter's picture is right next to hers. I was 23 on the school board for a period of time here in 24 Coquille, so I'm familiar with Coquille. And from 25 what people were telling me, Leah was not a person</p> | <p style="text-align: right;">24</p> <p>1 shirt, why didn't you seize it? Why didn't you 2 take it? I thought that was a mistake. 3 He assigned to the -- a case officer, 4 Dave Hall. And the reason he assigned 5 Dave Hall -- and I don't want to sound overly -- I 6 think Dave -- he's now deceased, but I think Dave 7 admitted it, Dave had never had any major case 8 experience. He'd never worked a murder. He'd 9 never worked a major crime. And the chief put him 10 in charge primarily because Dave was on light duty 11 and hurt his knee. And so it was easier to put 12 him on it than to take somebody else. And there 13 was -- why are you doing that? You need somebody 14 more experienced to be the lead officer.</p> <p>15 Then there was a lady, her name was 16 Shelly, less than a year experience, and the chief 17 threw her into the mix, having her running around 18 doing stuff that she just didn't have the 19 experience or training to be doing.</p> <p>20 Q. Is that Shelly Grant? That's the only 21 Shelly I'm aware of.</p> <p>22 A. Yeah, I believe so. Shelly Grant. I 23 can't point to any mistakes that Shelly made, but 24 I thought putting two really, really inexperienced 25 people in this type of investigation was not</p> |

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| <p style="text-align: right;">25</p> <p>1 proper.</p> <p>2 And then there were things that 3 happened -- some of the things I didn't really 4 find out until later. For example, the 5 Nicholas McGuffin interview that Chief Reeves did, 6 I believe I knew there was an interview, but I 7 didn't know there was a recording, I didn't know 8 there was a transcript. I didn't find that out 9 until 2009, 2010. I mean, there were things that 10 Chief Reeves did that he didn't communicate to us 11 that he knew about that he didn't share with the 12 rest of the team. And then some of the 13 information he gave to us was flat out incorrect. 14 He misinterpreted.</p> <p>15 Q. Do you remember anything specific that 16 was incorrect or that he misinterpreted?</p> <p>17 A. Yes. The incident with Big John, and 18 I forget John's last name for the life of me.</p> <p>19 Q. Are you talking about John Lindegren?</p> <p>20 A. Right. He's kind of a character here 21 around Coquille. I just saw him a couple weeks 22 ago. We call him Big John because he's like 6'8" 23 and 300 pounds all muscle. He's a kind of a 24 character.</p> <p>25 But the chief had related to us -- we</p> | <p style="text-align: right;">27</p> <p>1 through -- when we found what the chief had done, 2 it was basically when a report came in he threw it 3 in a banana box. We found, I think it was five 4 banana boxes of reports stacked someplace at 5 Coquille PD in no order, no sense of organization, 6 whatever.</p> <p>7 So we're going through this, and we 8 find the officer's report about the contact with 9 Lindegren. And that's where we learn what 10 Lindegren had actually said back in 2000, was that 11 he had seen Leah and Nick outside of 12 Sherri Mitchell's at 9:00; not Leah's house on the 13 other side of town, but Sherri Mitchell's place. 14 And I said, Well, that's not what the chief told 15 us, you know, he told us an entirely different 16 story. So we talked to the officer. You wrote 17 this report. Was it Mitchell's place or Leah's 18 place? Oh, no. He told me Mitchell's place. 19 Okay.</p> <p>20 So then we go and talk to him, and 21 he's -- Yeah, I saw her outside of Mitchell's 22 place. And he talked about right after 9:00. 23 Well, how do you know it's after 9:00? He had 24 this habit of going over to his sister's house to 25 watch Survivor. And he told the story about,</p> |
| <p style="text-align: right;">26</p> <p>1 had these morning briefings and Chief Reeves would 2 just talk and talk and talk. And at one point two 3 or three weeks into this I said, Chief, we're not 4 accomplishing anything by listening to you talk 5 for two hours before we go out and do stuff. Can 6 we shorten it up a bit? And he did at my 7 suggestion.</p> <p>8 But one of the things he told us was, 9 he said -- and I remember this in the meeting, he 10 was real clear, he says, Yeah, I talked to 11 Big John or somebody -- one of his officers had 12 talked to Big John. And the officer had reported 13 to him that Big John saw Leah and Nick together 14 outside of Leah's house, and he put it around nine 15 o'clock.</p> <p>16 And we in the group, including myself, 17 immediately said, Well, he's got it wrong, because 18 we had sighting other where in town around nine 19 o'clock where Leah was supposed to be, whether it 20 was at Sherri Mitchell's house or McKay's or what 21 was then the credit union or the restaurant, 22 whatever. We just immediately discounted it.</p> <p>23 Well, then in 2010, 2011 we find -- 24 that's the other thing Chief did, he never sent me 25 all the reports in this case. When we were going</p> | <p style="text-align: right;">28</p> <p>1 Yeah, I watched Survivor and somebody got voted 2 off and I'm on my way home and that's when I see 3 them.</p> <p>4 And I'm, at that point in time, 5 saying, Okay, guys, I don't think he's giving us a 6 straight story. Because my wife's a Survivor fan 7 and she watches it almost religiously, and at the 8 time it was on Thursday night. I said, Survivor 9 is on Thursday night, it's always been on Thursday 10 nights, as far as I know, so it can't be Wednesday 11 night.</p> <p>12 And they went back and checked, and 13 sure enough the first season of Survivor which was 14 in 2000 was on Wednesday night. And the episode 15 he was talking about turned out to be the episode 16 that he had told the officer about back in 2000.</p> <p>17 So that was one thing that clearly 18 Chief Reeves had miscommunicated to us.</p> <p>19 Q. Do you remember any others?</p> <p>20 A. I don't remember any others about the 21 mistakes he had communicated to us.</p> <p>22 The thing that over -- as the case 23 went cold, one of the things that bothered me was 24 whenever I would try to talk to him about, Hey, 25 let's get together and compare notes. I've</p> |

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| <p style="text-align: right;">33</p> <p>1 Q. That polygraph report, where did you 2 look for that?</p> <p>3 A. Well, I went through the scientific 4 evidence binder, that's where I looked for it. 5 And then I have -- the reports in my binders are 6 categorized by officer, and I looked through 7 Kip Oswald's reports and I didn't see it there. I 8 don't know if I went back and looked at Ranger's 9 stuff or not, Detective Ranger from the state 10 police. He was the polygrapher at that time for 11 the state police.</p> <p>12 I don't recall if I went back and 13 looked through Ranger's materials or not.</p> <p>14 Q. Did Kip Oswald have kind of personnel 15 file it might have ended up in?</p> <p>16 A. I don't know. I'm sure he had a 17 personnel file at the sheriff's office. He 18 retired from the sheriff's office and went to work 19 for North Bend PD. And then after the Freeman 20 case had been concluded, a couple years after 21 that, you might want to look at Kip's personnel 22 file there at North Bend. He was terminated by 23 North Bend, and I believe they terminated him over 24 some issues that he had with him telling the truth 25 about whether or not he had been given a doctor's</p> | <p style="text-align: right;">35</p> <p>1 was at Coquille PD. I didn't know about these 2 other reports and there was pieces of evidence 3 they had and so forth.</p> <p>4 Q. So am I accurate when I'm thinking 5 that the trail had kind of gone cold --</p> <p>6 A. Yes.</p> <p>7 Q. -- during that period of time?</p> <p>8 A. Yes.</p> <p>9 Q. By the time you get to trial in 2010, 10 2011, did you believe that the case had been fully 11 prepared for trial?</p> <p>12 A. I did, yes.</p> <p>13 Q. Who prepared it for trial?</p> <p>14 A. Well, I mean, for what happened in the 15 courtroom, is that what you're asking?</p> <p>16 Q. Correct.</p> <p>17 A. I did.</p> <p>18 Q. Did you have any help with that?</p> <p>19 A. My chief deputy at the time, 20 Erica Soublet, assisted me at trial. She was 21 co-counsel with me at trial. But the majority of 22 the trial prep, getting it ready for trial, was 23 done by me.</p> <p>24 Q. Did you believe that you had done all 25 the investigation you needed to do to prepare it</p> |
| <p style="text-align: right;">34</p> <p>1 release to come back to work type of thing. So he 2 was terminated. I know he was terminated or asked 3 to resign, but I don't know all of the specifics.</p> <p>4 I don't think -- if there is a 5 polygraph report in a file, it wouldn't be at 6 North Bend. It would be at the sheriff's office.</p> <p>7 Q. At Coos County Sheriff's Office?</p> <p>8 A. Right.</p> <p>9 Q. So going back to the police report we 10 were talking about and that gap in time from 2001 11 and 2002 to 2008, you don't recall any 12 investigation in that period of time?</p> <p>13 A. Well, there was a couple things that 14 popped up here and there. There was something 15 about -- I can't remember. We got something from 16 Bend OSP about somebody up there spouting off 17 knowing something about Leah Freeman, and we 18 looked into that and it didn't seem to go 19 anywhere. There were occasionally -- I'm thinking 20 like once every two or three years there would be 21 something that popped up like that, but we would 22 look at it and nothing really came out of it.</p> <p>23 Again, I'm looking at this stuff kind 24 of from an incomplete standpoint because during 25 that time period I didn't know a lot of stuff that</p> | <p style="text-align: right;">36</p> <p>1 for trial?</p> <p>2 A. Yes.</p> <p>3 Q. Did you believe that the facts had 4 been fully developed for trial?</p> <p>5 A. Yes.</p> <p>6 Q. Let's talk about what you did to 7 prepare for trial.</p> <p>8 A. Okay.</p> <p>9 Q. Can you give me an overview of what 10 you did?</p> <p>11 A. Well, I think -- well, I think we 12 got -- to overall prepare for trial, I think we 13 probably need to back up to how the case got 14 reactivated, so to speak, because that's probably 15 where it started.</p> <p>16 After I became DA January 1, 2008, and 17 I stood for election in May and got elected the 18 first time in May. I want to say it was June, 19 July Chief Reeves announced his retirement, and 20 Coquille PD, the City of Coquille, decided to do a 21 nationwide search for a new police chief.</p> <p>22 To be candid, the police in Coquille 23 at that time in 2008 had a pretty bad reputation. 24 They were seen by a lot of citizens as being 25 overly aggressive, rude, obnoxious, lots of</p> |

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| <p style="text-align: right;">37</p> <p>1 complaints. And the city manager at the time 2 wanted to change that and so they did this 3 nationwide search.</p> <p>4 They came up with five candidates. 5 And they had an open house at the community 6 center, which I went to, and I spoke to all five 7 candidates. I indicated to them my belief that -- 8 on the Leah Freeman case that Chief Reeves had 9 been dragging his feet for whatever reason, didn't 10 want to be bothered with the case anymore, and I 11 said, I think we need to take a hard look at it. 12 And I asked each one of the five if they would be 13 willing if they became chief. And they all seemed 14 to have done their homework and knew about the 15 case before I talked to them. I said, Would you 16 guys be willing to work with me in reopening it 17 and see what we have? And they all five agreed. 18 I was on the interview panel for the five 19 finalists, which led to Chief Daniels.</p> <p>20 So after Chief Daniels had been on 21 board, the first thing we did once he came on 22 board -- and it probably was two or three or four 23 months after he came on board -- was, okay, where 24 are the reports? That was the first thing, is 25 getting everything organized.</p> | <p style="text-align: right;">39</p> <p>1 suspect, but who are the other people we need to 2 look at? Go through it and tell me what you 3 think. So they went through and looked at it. 4 And I can't recall off the top of my head anything 5 specific that they recommended, but they had some 6 recommendations. We kept this all quiet. We 7 didn't tell anybody we were doing this.</p> <p>8 Then we -- like I said, we're looking 9 at the evidence. That's when I found out that we 10 didn't have Leah's clothes or the shoes, they were 11 still in England. Good Lord. Nobody had 12 requested that they be sent back. And I'm 13 thinking, Oh, my gosh. So we got ahold of that 14 lab in England, found out they still had them, and 15 had them sent back.</p> <p>16 Now, in terms -- the other thing I did 17 was -- is the grand jury that we conducted in 18 2010. I looked at that as a very important 19 preparation tool because we had -- and 20 Chief Daniels disagreed with me on this approach 21 and actually tried to -- he had people come and 22 try to talk me out of it.</p> <p>23 But my approach was, Look, we've got 24 people out there saying Leah was hit by a car, 25 we've got people out there saying she was held</p> |
| <p style="text-align: right;">38</p> <p>1 The second thing would have been, 2 Okay, what's the evidence? What physical evidence 3 do we have?</p> <p>4 That's when we found things like the 5 recording of Nicholas McGuffin's interview the 6 Friday after she disappeared. We didn't know it 7 had been recorded. There's a tape. And it's on 8 an old DUVI tape that had been recorded over, you 9 know, and it's fragile. And I said, We got to get 10 that over and get it converted to digital so we 11 don't lose that, and then we found a transcript 12 that we didn't know about.</p> <p>13 So then we're going through the 14 physical evidence and we found out we had Leah's 15 diaries. I didn't know we had Leah's diaries. So 16 part of that was -- I had the diaries copied and I 17 read all the diaries. Reading all the police 18 reports. I read them all.</p> <p>19 We discovered in 2010 or 2009 -- well, 20 one of the things we did once the things were 21 organized, then we did this under wraps, I brought 22 in a bunch of retired homicide investigators, I 23 made them kind of special DA investigators, if you 24 will, and I said, Go through this stuff and tell 25 me where we need to go. Obviously, Nick is a</p> | <p style="text-align: right;">40</p> <p>1 hostage at the scout cabin. We need to bring in 2 all these people and find out, okay, what do you 3 know about this? We need to eliminate -- I 4 shouldn't say -- we need to find out what the 5 truth is. Is there some truth to these rumors? 6 If so, we need to figure it out.</p> <p>7 That's why the grand jury, they called 8 110 witnesses over several days, spaced out over 9 several weeks -- I'm trying to find out, okay, did 10 she get hit by a car, was she held captive, 11 whatever, what do these people know. And every 12 time we tried to run down those rumors, it was, 13 Well, that's what I heard on the street. Well, 14 who told you this? Then we go to that person, 15 Well, who told you that? Well, that's what I 16 heard. You know, we never were able to come to 17 anyone that had any firsthand knowledge about any 18 of these doggone rumors floating around town. And 19 that was a big preparation, and so I had all of 20 those materials.</p> <p>21 And so then getting ready for trial it 22 was a matter of, okay, who do I want to testify, 23 what do I want to have them testify to, picking 24 out my witnesses, picking out the exhibits and so 25 forth. Okay, what are the questions I want to ask</p> |

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| <p>41</p> <p>1 these people and so forth.</p> <p>2 Q. You talked about having reviewed all</p> <p>3 of the police reports?</p> <p>4 A. Right.</p> <p>5 Q. When I think of police reports I also</p> <p>6 think of interview reports. Are you considering</p> <p>7 the interview reports as well?</p> <p>8 A. Yes. Transcripts of interviews,</p> <p>9 reviewed all of those.</p> <p>10 Q. What about lab reports?</p> <p>11 A. Lab reports also.</p> <p>12 Q. From OSP lab?</p> <p>13 A. Right.</p> <p>14 Q. From the England lab?</p> <p>15 A. Right.</p> <p>16 Q. I believe you also had Microtrace?</p> <p>17 A. Microtrace, yes.</p> <p>18 Q. Did you review the entire file?</p> <p>19 A. When the McCreas asked for the bench</p> <p>20 files, I did not review the bench file stuff,</p> <p>21 especially the DNA stuff because I have no clue</p> <p>22 what all those graphs and notes -- I'm not an</p> <p>23 expert at it. I don't know what those things</p> <p>24 mean. They wanted it, I got it for them. I don't</p> <p>25 recall going through the lab or the bench notes.</p> | <p>43</p> <p>1 don't remember how it came about, but we reached</p> <p>2 an agreement that in lieu of having the experts</p> <p>3 come down and testify, we would rely upon the</p> <p>4 reports. And my recollection is we agreed to</p> <p>5 stipulate to the reports being entered as</p> <p>6 evidence.</p> <p>7 And the purpose of Kathy Wilcox was to</p> <p>8 explain what the reports said. I wasn't calling</p> <p>9 her as an expert in DNA. I was calling her as --</p> <p>10 well, she did do work on the case, she had</p> <p>11 examined Leah's clothes and so forth, so I did</p> <p>12 have her as a fact witness in terms of what she</p> <p>13 actually did on the case. And then the second</p> <p>14 part was, okay, we've got these reports. Can you</p> <p>15 explain to the jury what these reports mean. And</p> <p>16 that's why -- I wasn't calling her as an expert in</p> <p>17 DNA. I was asking her to explain.</p> <p>18 And that was an agreement that we had</p> <p>19 reached with the McCreas because, otherwise,</p> <p>20 normally you wouldn't be able to do that. In a</p> <p>21 trial you would have to call the experts and have</p> <p>22 them explain everything. That was an agreement</p> <p>23 that we had reached as to how the trial would be</p> <p>24 conducted.</p> <p>25 Q. So did you talk with Ms. Wilcox in</p> |
| <p>42</p> <p>1 No, I wouldn't have known.</p> <p>2 Q. Any other part of the file that you</p> <p>3 didn't review?</p> <p>4 A. No. That would be the only part,</p> <p>5 would be the stuff that I have no expertise in</p> <p>6 trying to figure out what it means. I wouldn't</p> <p>7 know. But everything else -- I would have</p> <p>8 included medical records that we got for Leah and</p> <p>9 so forth.</p> <p>10 Q. So when we talk about the bench notes</p> <p>11 for the DNA, and you say you weren't an expert on</p> <p>12 that --</p> <p>13 A. Right.</p> <p>14 Q. -- did you rely on your experts to be</p> <p>15 your eyes and ears on the DNA?</p> <p>16 A. Yes.</p> <p>17 Q. And your experts on that was</p> <p>18 Kathy Wilcox for trial?</p> <p>19 A. Well, that was -- what we did was --</p> <p>20 at trial was -- the question arose, and I put this</p> <p>21 to the McCreas, Do we want to call the DNA people?</p> <p>22 Do you want me to call these people, because my</p> <p>23 plan had been -- was to call the people that had</p> <p>24 done the DNA testing.</p> <p>25 And I don't know how it came about, I</p> | <p>44</p> <p>1 advance of trial about what was in those reports?</p> <p>2 A. I gave her copies. She had access to</p> <p>3 the reports. I showed her the reports. I said,</p> <p>4 Kathy, I'm going to ask you to explain what the</p> <p>5 reports mean. And I don't know -- I had pretrial</p> <p>6 prep with every -- just about every witness, where</p> <p>7 I sat down and said, Okay, this is the questions</p> <p>8 I'm going to go ask you, and so forth. And I know</p> <p>9 I sat down with Kathy. But I said, All I'm going</p> <p>10 to ask you to do is explain what they mean. I</p> <p>11 don't believe they went any further than that.</p> <p>12 Q. Did you sit down with any other DNA</p> <p>13 experts in advance of trial?</p> <p>14 A. No.</p> <p>15 Q. You said that you had met with almost</p> <p>16 all of the witnesses pretrial.</p> <p>17 A. Yes.</p> <p>18 Q. Are there specific witnesses you have</p> <p>19 in mind that you didn't meet with?</p> <p>20 A. Well, I had listed on my witness list</p> <p>21 Mr. McGuffin's parents and Mr. McGuffin's</p> <p>22 ex-girlfriend as potential witnesses.</p> <p>23 I didn't meet with them because, A, my</p> <p>24 first reaction was they wouldn't meet with me,</p> <p>25 they wouldn't agree to do it. I mean, I didn't</p> |

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| <p style="text-align: right;">85</p> <p>1 that to include an aider, abettor, or 2 co-conspirator.</p> <p>3 A. That's correct. I did not ask them to 4 consider that at all.</p> <p>5 Frankly, what I told them to do is, 6 You've heard everything, you have heard about all 7 these rumors, and I want you to tell me what you 8 think, if you think an indictment should be 9 issued. I left it up to them to decide whether or 10 not an indictment should be issued and against 11 who, because, frankly, what I wanted at that point 12 was -- is if the evidence about all this other 13 stuff going on -- that's why I presented it to 14 them, so that they would know about all these 15 other potential suspects and this and that and the 16 other. I wanted them to tell me who they thought 17 did it and if that person should be indicted. So 18 I did not go in there advocating that they should 19 indict Mr. McGuffin. I let them decide what to 20 do.</p> <p>21 Q. Did you tell them your theory about 22 Mr. McGuffin?</p> <p>23 A. Did I argue the case? No, I don't 24 believe I did. I said, You've heard everything. 25 I need you guys to decide what you think needs to</p> | <p style="text-align: right;">87</p> <p>1 whose shoes are these? Are these her shoes or 2 not. That's what we wanted to know.</p> <p>3 Q. Did that intent change at any point in 4 time?</p> <p>5 A. Once they came back that there was 6 blood on the bottom of the one shoe, I said, Okay, 7 we need to figure out who that blood belongs to, 8 because at the time I didn't know who it belonged 9 to. It could be the potential suspect, it could 10 be Leah's, I didn't know so we needed to get that 11 test.</p> <p>12 Q. Were you looking for any kind of 13 perpetrator DNA on those shoes at the time?</p> <p>14 A. I said, We need to find out -- now, 15 see, back in 2000, again, touch DNA was in its 16 infancy, and I can't even recall if I knew about 17 touch DNA in 2000. I said, We need to make sure 18 these are Leah's shoes, and we need to find out 19 who that blood belongs to. That was my 20 recollection of what we needed to do with that 21 testing.</p> <p>22 Q. And then we talked a little bit about 23 the England lab and that it was your boss 24 Mr. Burgett --</p> <p>25 A. Burgett.</p> |
| <p style="text-align: right;">86</p> <p>1 be done.</p> <p>2 Q. What about at trial, did you argue to 3 the jury or do you believe that you argued to the 4 jury a theory of accomplice liability?</p> <p>5 A. No. I did not.</p> <p>6 Q. Earlier you mentioned that you had 7 made the suggestion that the shoes be tested for 8 DNA. And you said that you wanted them to be 9 tested to determine whether they were 10 Ms. Freeman's shoes.</p> <p>11 A. That's correct.</p> <p>12 Q. Were you looking for anything else in 13 that testing process?</p> <p>14 A. At the time that I made the 15 suggestion, I don't believe I knew that there was 16 blood on the bottom of that shoe. I don't believe 17 I was aware of the blood on the bottom of the shoe 18 until after Kathy Wilcox told me about it. My 19 intent at that time was we need to figure out are 20 these in fact Leah Freeman's shoes. So that's 21 where we went and got the standards from her mom 22 and dad, and then we also got something off her 23 hairbrush and her toothbrush to confirm that those 24 shoes were, in fact, hers.</p> <p>25 That was my intent at the time, was</p> | <p style="text-align: right;">88</p> <p>1 Q. My apologies -- that it was his 2 decision to involve the lab in England.</p> <p>3 A. That's correct.</p> <p>4 Q. Did you distrust that lab?</p> <p>5 A. No, I didn't distrust the lab. I 6 didn't know if their procedure was going to be 7 admissible because it was never really fully 8 explained to me by Mr. Burgett or the other people 9 what this new process was.</p> <p>10 And I said, First of all, are we going 11 to be able -- if it finds something, are we going 12 to be able to use it, because I didn't know -- 13 because we would have to go through -- whatever 14 this new process was, we would have to go through 15 Brown/O'Key analysis about whether that would be 16 admissible, and I didn't know if we would be able 17 to do that. I didn't know enough about the 18 process.</p> <p>19 Secondly, I didn't think -- because 20 Mr. Burgett was, Well, maybe we'll get 21 Nick McGuffin's DNA on the pants, or on the 22 zipper, I think is one of the things he said. I 23 said, Well, what's that going to tell us? They're 24 boyfriend/girlfriend. They're having sex. That's 25 not going to tell us anything. And then I said</p> |

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| <p style="text-align: right;">161</p> <p>1 and come back to me and tell me whether they are 2 still on the suspect list or they have been 3 eliminated by some reason.</p> <p>4 The other thing I did was the grand 5 jury -- Chief Daniels only wanted me to present 6 stuff that showed Nick's guilt. He wanted me to 7 go in and do a grand jury basically in one day or 8 one afternoon and get an indictment on Nick. I 9 told him no.</p> <p>10 That was not a popular decision with 11 him. In fact, he had people come talk to me, and 12 one of them was an idiot from the Vidocq Society, 13 D-I-V-O-Q [sic], trying to get me to change my 14 mind. And I refused to do that. I said, We have 15 to run down in grand jury every last one of these 16 rumors and potential suspects. And so that's why 17 there's 110, 120 people that were interviewed or 18 questioned in front of the grand jury. I felt we 19 needed to do a complete and total investigation.</p> <p>20 Q. Okay. You've seen some exhibits today 21 of various other people. You've heard about the 22 fellow who may be in fact Charity Kinsey.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Was there a discussion during trial 25 about evidence that the defense was going to be</p> | <p style="text-align: right;">163</p> <p>1 that are presented today about some fellow driving 2 around in a gray Cadillac or some fellow who 3 attacked Charity Kinsey, would these have been 4 people that you would have objected to being 5 brought up as potential suspects during trial?</p> <p>6 A. Yes.</p> <p>7 Q. Based on that ruling?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. There is a claim that -- when I 10 look at this petition, you talked about bench 11 notes, giving bench notes to the McCreas. What 12 bench notes did you give to them?</p> <p>13 A. My recollection is they called me -- 14 my practice is generally not to get the bench 15 notes unless the defense asks for it, primarily 16 because they're so voluminous and there is a cost 17 associated with the state police in producing 18 them. And they won't charge me for them, but 19 there is a cost to the State in producing these. 20 So unless I'm asked to produce them, I generally 21 don't, unless I have an independent reason myself, 22 and I can't recall a case where I've done that 23 other than there was one case I anticipated they 24 were going to do it so I asked for them, but 25 anyway.</p> |
| <p style="text-align: right;">162</p> <p>1 able to bring in about other potential suspects? 2 Do you remember having a discussion about that 3 with the Court?</p> <p>4 A. I filed a motion pretrial, and I 5 called it a motion in limine, and I forgot which 6 number I called it, motion in limine two or 7 something along that line. And my reasoning 8 was -- and I listed several people in there, 9 Alicia Michaud, there was several people I listed, 10 and I said, Look, there's no credible evidence, no 11 admissible evidence to support that these people 12 are suspects and I want to keep it out. Unless 13 you got something that ties into the crime, we 14 shouldn't be going down that rabbit hole.</p> <p>15 And so we had a hearing on it. 16 Judge Barron ruled that while he wouldn't keep -- 17 while he wouldn't just give a blanket no, if the 18 defense wanted to go down that route they would 19 have to demonstrate admissible evidence that would 20 tie that potentially to Leah's death. That's my 21 understanding of his ruling. He didn't foreclose 22 them from doing it, but they would have to produce 23 more than, This guy's a suspect. They would have 24 to tie something to it.</p> <p>25 Q. Okay. When we see in these exhibits</p> | <p style="text-align: right;">164</p> <p>1 My recollection was I was asked to get 2 the bench notes for the 2000 through 2001, 2003 3 testing, so I got those bench notes and I gave 4 them to the defense. I don't recall ever being 5 asked to get the bench notes for the testing that 6 was done in 2008, 2009, 2010, and I do not believe 7 I requested those bench notes.</p> <p>8 Q. I'm looking at paragraph 10, sub 2 and 9 3, and that's on page 18 of the fourth amended 10 petition. Look at 2 and 3. Do you know if you 11 provided the complete bench notes from lab 12 personnel and the complete records of lab work 13 including communication logs from OSP crime lab 14 and the file of Microtrace?</p> <p>15 A. I did not get the complete records of 16 the lab work from the testing that was done after 17 the case was reopened because I do not recall 18 being asked to get those.</p> <p>19 Q. Okay.</p> <p>20 A. And I did not request the file from 21 Microtrace because I was not requested to do so.</p> <p>22 Q. Very good.</p> <p>23 Had that been requested would you have 24 done it?</p> <p>25 A. Yes.</p> |

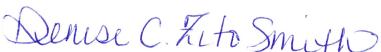
R. Paul Frasier

1 STATE OF OREGON.) ss.
2 County of Douglas)
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4 I, Denise C. Zito Smith, CSR, a Certified
5 Shorthand Reporter for the State of Oregon, hereby
6 certify that the witness was sworn and the
7 transcript is a true record of the testimony given
8 by the witness; that at said time and place I
9 reported by stenotype all testimony and other oral
10 proceedings had in the foregoing matter; that the
11 foregoing transcript consisting of 204 pages
12 contains a full, true and correct transcript of
13 said proceedings reported by me to the best of my
14 ability on said date.

15 If any of the parties or the witness
16 requested review of the transcript at the time of
17 the proceedings, such correction pages are
18 included.

19 IN WITNESS WHEREOF, I have set my hand this
20 14th day of June 2019, in the City of Canyonville,
21 County of Douglas, State of Oregon.

22

23 

24 _____
25 Denise C. Zito Smith
Oregon CSR No. 01-0375
Expires 9/30/2021